

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOSE CARREON

Plaintiff,

- against -

O.K. DELI GROCERY D/B/A JAE'S DELI GROCERY  
and DOK MAN KIM

Defendants.

Case No.: 18-CV-1456

**ANSWER AND  
AFFIRMATIVE DEFENSES**

Defendants O.K. DELI GROCERY and DOK MAN KIM ("Defendants"), by their attorneys, Hang & Associates, PLLC, for its answer to Plaintiff JOSE CARREON's Complaint, states as follows:

**DEFENDANTS' ANSWER TO THE FIRST AMENDED COMPLAINT**

1. Defendants states that Paragraph 1 of the Complaint contains conclusion of law that requires no response.
2. Defendants states that Paragraph 2 of the Complaint contains conclusion of law that requires no response.
3. Defendants states that Paragraph 3 of the Complaint contains conclusion of law that requires no response.
4. Defendants deny the allegations set forth in Paragraph 4 of the Complaint.
5. Defendants admit the allegations set forth in Paragraph 5 of the Complaint.
6. Defendants admit the allegations set forth in Paragraph 6 of the Complaint.
7. Defendants deny the allegations set forth in Paragraph 7 of the Complaint.
8. Defendants deny the allegations set forth in Paragraph 8 of the Complaint.
9. Defendants deny the allegations set forth in Paragraph 9 of the Complaint.

10. Defendants deny the allegations set forth in Paragraph 10 of the Complaint.
11. Defendants admit the allegations set forth in Paragraph 11 of the Complaint.
12. Defendants admit the allegations set forth in Paragraph 12 of the Complaint.
13. Defendants deny the allegations set forth in Paragraph 13 of the Complaint.
14. Defendants states that Paragraph 14 of the Complaint contains conclusion of law that requires no response.
15. Defendants states that Paragraph 15 of the Complaint contains conclusion of law that requires no response.
16. Defendants states that Paragraph 16 of the Complaint contains conclusion of law that requires no response.
17. Defendants admit that Plaintiff was paid in cash but lack information and belief to form a response to the remaining allegations set forth in Paragraph 17 of the Complaint.
18. Defendants admit the allegations set forth in Paragraph 18 of the Complaint.
19. Defendants admit the allegations set forth in Paragraph 19 of the Complaint.
20. Defendants admit the allegations set forth in Paragraph 20 of the Complaint.
21. Defendants admit the allegations set forth in Paragraph 21 of the Complaint.
22. Defendants admit the allegations set forth in Paragraph 22 of the Complaint.
23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint.
24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.
25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.
26. Defendants deny the allegations set forth in Paragraph 26 of the Complaint.
27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.
28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint.
30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.
31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.
32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.
33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.
34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.
35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.
36. Defendants repeats and re-alleges all paragraphs above as though fully set forth herein.
37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint
38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint
39. Defendants deny the allegations set forth in Paragraph 39 of the Complaint
40. Defendants repeats and re-alleges all paragraphs above as though fully set forth herein.
41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint
42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint
43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint
44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint
45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint
46. Defendants repeats and re-alleges all paragraphs above as though fully set forth herein.
47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.
48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint.

49. Defendants deny the allegations set forth in Paragraph 49 of the Complaint.

50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.

51. Defendants repeats and re-alleges all paragraphs above as though fully set forth herein.

52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint.

53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.

Defendants admit only that Plaintiff purports to seek judgment against Defendants for the relief referenced in the “WHEREFORE” Paragraph of the Complaint. Except as admitted herein, Defendants deny the allegations in this “WHEREFORE” Paragraph of the Complaint.

### **AFFIRMATIVE AND OTHER DEFENSES**

#### **FIRST DEFENSE**

The Complaint is barred in whole or in part as some or all of the allegations fail to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

Defendants, at all times, paid and provided working conditions to Plaintiff in accordance with all applicable state, federal, and local laws.

#### **THIRD DEFENSE**

Defendants have acted in good faith and have not violated any rights that may be secured to Plaintiff under any federal, state, or local laws, rules, regulations and guidelines.

#### **FOURTH DEFENSE**

The Complaint fails to state a claim for punitive damages.

**FIFTH DEFENSE**

The Complaint fails to state a claim for compensatory damages.

**SIXTH DEFENSE**

Plaintiff has failed to mitigate or otherwise act to avoid, lessen or reduce any of the damages, injury or harm of which they now complain.

**SEVENTH DEFENSE**

The Complaint is barred, in whole or in part, because Plaintiff was paid all sums which may have been due to them under the applicable laws and their corresponding regulations.

**EIGHTH DEFENSE**

Plaintiff was barred from recovering based on equitable doctrines, including, without limitation, laches, unclean hands, waiver, and/or estoppel, and prior administrative proceedings.

**NINTH DEFENSE**

Any recovery should be offset by the amounts of tax credits and/or deductions available to the Plaintiff based on any of the transaction at issue.

**TENTH DEFENSE**

The claims for pre-judgment interest under the New York Labor Law are preempted by the remedies provided by the Fair Labor Standards Act.

**ELEVENTH DEFENSE**

The Court shall not employ supplement jurisdiction over Plaintiff's New York Labor Law claims when Plaintiffs fail to state a claim under Federal Labor Standards Act.

**TWELVETH DEFENSE**

Defendants have annual gross volume of sales less than \$500,000 and therefore is not an enterprise engaged in interstate commerce under the Federal Labor Standards Act.

**RESERVATION OF RIGHTS**

Defendants reserve the right to raise additional affirmative and other defenses that may subsequently become or appear applicable to Plaintiff's claims.

WHEREFORE, Defendants respectfully request judgment dismissing the Complaint with prejudice and awarding them costs, reasonable attorneys' fees, and such other relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

Defendants request a jury trial on all issues so triable in this answer.

Dated: May 22, 2018

HANG & ASSOCIATES, PLLC.

/s/Phillip H. Kim

Phillip H. Kim, Esq.  
136-20 38<sup>th</sup> Ave. Suite 10G  
Flushing, New York 11354  
Tel: 718-353-8588  
pkim@hanglaw.com  
*Attorney for Defendants*

TO: Heriberto A. Cabrera, Esq.  
480 39<sup>th</sup> Street, 2<sup>nd</sup> Fl.  
Brooklyn, NY 11232  
Tel: 718-439-3600  
Email: herblaw11220@gmail.com  
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney duly licensed to practice before this Court, certifies that by filing the Defendants' Answer and Affirmative Defenses through this Court's electronic filing system, he caused the documents to be served upon the following:

Heriberto A. Cabrera, Esq.  
480 39<sup>th</sup> Street, 2<sup>nd</sup> Fl.  
Brooklyn, NY 11232  
Tel: 718-439-3600  
Email: herblaw11220@gmail.com  
*Attorney for Plaintiff*

I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 22, 2018

HANG & ASSOCIATES, PLLC

By: /s/Phillip H. Kim  
Phillip H. Kim, Esq.  
136-20 38<sup>th</sup> Ave. Suite 10G  
Flushing, New York 11354  
(718) 353-8588  
*Attorney for Defendants*